

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

In the Matter of:

Determination of Royalty Rates and Terms
for Transmission of Sound Recordings by
Satellite Radio and “Preexisting”
Subscription Services (SDARS III)

Docket No. 16-CRB-001-SR/PSSR
(2018-2022)

**SIRIUS XM’S OPPOSITION TO SOUNDEXCHANGE’S
MOTION TO COMPEL THE SERVICES’ PRODUCTION OF CERTAIN DOCUMENTS**

Sirius XM Radio Inc. (“Sirius XM”) hereby opposes SoundExchange Inc.’s
 (“SoundExchange”) Motion to Compel the Services’ Production of Certain Documents, filed
 August 22, 2016 (the “Motion”).

INTRODUCTION

SoundExchange has sought an order from the Copyright Royalty Judges compelling
 Sirius XM to produce a “narrow set” of negotiating communications with direct licensor record
 companies: those relating to the possibility of more airplay on Sirius XM, and those discussing
 other “selling points” of the licenses. SoundExchange did so despite its own refusal, along with
 the other Copyright Owner Participants,¹ to produce the exact same category of documents to
 Sirius XM – negotiating documents between record companies and digital music services – on
 the purported grounds that doing so would be too burdensome for them and premature. The
 parties have now come to an agreement to each defer production of these documents until the

¹ The term “Copyright Owner Participants” refers collectively to SoundExchange, the American Association of Independent Music, the Recording Industry Association of America, Sony Music Entertainment, Universal Music Group, and Warner Music Group.

later discovery period following the submission of Written Direct Statements. Sirius XM believes this agreement renders moot Section I of SoundExchange's Motion.

In Section II of its Motion, SoundExchange seeks an order that Sirius XM be compelled to produce documents it has already agreed to produce. As SoundExchange itself acknowledges, however, this request relates to several categories of documents Sirius XM (and Music Choice, which is responding separately) have already agreed to produce. The request thus amounts to a wasteful, hastily drafted filing made without SoundExchange having even paused to review Sirius XM's production so as "to determine its sufficiency," Motion at 5 n. 4, and should be denied.

ARGUMENT

I. THE PARTIES HAVE AGREED TO DEFER PRODUCTION OF THE NEGOTIATING DOCUMENTS UNTIL THE DISCOVERY PERIOD FOLLOWING SUBMISSION OF WRITTEN DIRECT STATEMENTS

SoundExchange has sought to compel production of a "narrow set" of negotiating documents between Sirius XM and its direct licensors: those relating to "the possibility of more airplay for record labels that execute direct licenses," and those that identify other "selling points" of the direct licenses not included within the licenses themselves (together, the "negotiating documents"). Motion at 2-3. In the course of the parties' meet and confer process, Sirius XM informed SoundExchange and the other Copyright Owner Participants that it was prepared to produce such documents once the Copyright Owner Participants agreed to do the same with respect to negotiating documents and other communications between them and their digital music service licensees. The Services then stated in motion practice that they were

willing to defer such discovery until the later post-Written-Direct-Statement discovery period, but only if that deferral would apply to all productions.²

In an email dated August 28, 2016, SoundExchange has now agreed to defer its request for the negotiating documents until the later discovery period following the parties' submission of their Written Direct Statements, subject to Sirius XM's agreement to defer its own request for negotiating documents. Sirius XM agreed to that proposal, and has sought to engage SoundExchange in a process that will lead an agreement regarding the scope and timing of such production following the submission of Written Direct Statements.

Given the parties' interim agreement regarding the negotiating documents at issue, Sirius XM believes that Section I of the Motion is now moot.

II. SECTION II OF THE MOTION IS PREMATURE SINCE SOUNDEXCHANGE ADMITS THAT IT HAS NOT YET REVIEWED SIRIUS XM'S DOCUMENT PRODUCTION

SoundExchange filed its Motion on August 22, 2016, the same day that Sirius XM provided to SoundExchange its fourth production of documents, bringing the total number of documents already produced by Sirius XM to more than 11,000. Rather than taking the time to review Sirius XM's production, SoundExchange preemptively filed the Motion, asking the Judges to order Sirius XM to produce documents that SoundExchange itself admits it has no doubts that Sirius XM will produce. Motion at § II and p. 6. As SoundExchange acknowledges, Sirius XM "has agreed to produce" documents responsive to numerous categories identified by SoundExchange in its document requests, and it "does not doubt that the Services will honor their commitments to produce the documents." *Id.* at 5-6.

² See Services' Motion to Compel the Copyright Owner Participants to Produce Documents Related to the Universal-EMI Merger and Communications Regarding Sirius XM's Direct License Initiative, Dkt. No. 16-CRB-001-SR/PSSR (2018-2020), at § C.

In these circumstances, the Motion is, at best, not ripe for adjudication, amounting as it does to a request for an advisory opinion concerning the relevance of certain categories of documents that all participants agree either have been or will be produced. The ruling sought by Section II of the Motion should be denied.

CONCLUSION

For the above reasons, Sirius XM respectfully requests that the Judges deny the Motion in its entirety.

Dated: August 29, 2016
New York, NY

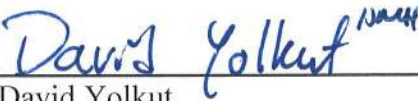
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CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2016, I caused a copy of Sirius XM's Opposition to SoundExchange's Motion to Compel the Services' Production of Certain Documents, to be served by email and overnight mail to the participants listed below:

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